U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: SAN ANTONIO, TEXAS Date: JUN 16 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), as an alien who falsely represents himself to be a citizen of the United States for any purpose or benefit under this Act. On February 19, 1999, in the United States District Court, Southern District of Texas the applicant was convicted of violation of 8 U.S.C. 1325(a)(3). On the same day he was removed to Mexico pursuant to section 235(b)(1) of the Act 8 U.S.C. § 1225. The record reflects that the applicant reentered the United States on an unknown date without a lawful admission or parole and without permission to reapply for admission in violation of section 276 of the Act, 8 U.S.C. § 1326 (a felony). The applicant is therefore inadmissible under § 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A). He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States and reside with his spouse and children.

The District Director determined that the applicant is not eligible for any exception or waiver under section 212(a)(6)(C)(ii) of the Act and denied the waiver application accordingly. *See District Director's Decision* dated October 21, 2002.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (ii) FALSELY CLAIMING CITIZENSHIP-
>
> > (I) IN GENERAL- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.
> >
> > (II) EXCEPTION- In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

There is no waiver available under this section of the Act.

The record reflects that on February 18, 1999, the applicant represented himself to be a citizen of the United States in order to gain admission into the United States at the Brownsville, Texas Port of Entry. Therefore, the applicant is clearly inadmissible under section 212(a)(6)(C)(ii) of the Act.

Additionally, the applicant was removed from the United States on February 19, 1999, and reentered illegally on an unknown date. He has never been granted permission to reapply for admission. He is therefore subject to section 241(a)(5) of the Act, 8 U.S.C. 1231(a)(5) which states:

Detention, release, and removal or aliens ordered removed.-

> (5) reinstatement of removal orders against aliens illegally reentering.- if the attorney General finds that an aliens has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the aliens is not eligible and may not apply for any relief under this Act [chapter], and the aliens shall be removed under the prior order at any time after reentry.

The applicant is subject to the provisions of sections 212(a)(6)(C)(ii) and 241(a)(5) of the Act which are very specific and applicable and he is not eligible for any relief under this Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.